

IN THE MATTER OF:

MIDLAND FUNDING LLC
(a/k/a MIDLAND FUNDING,
MIDLAND FUNDING INC.,
MIDLAND FUNDING, LLC);

MIDLAND CREDIT
MANAGEMENT, INC.
(f/k/a MERCHANTS FINANCE
CORPORATION, INC.);

MIDLAND PORTFOLIO
SERVICES LLC;

ENCORE CAPITAL GROUP, INC.
(f/k/a MCM CAPITAL GROUP,
INC.);

JAMES BRANDON BLACK
(a/k/a J. BRANDON BLACK);

GEORGE RICHARD BROOKER;

PAUL JARON GRINBERG;

ROBIN R. PRUITT;

JAMES SYRAN
(a/k/a JIM SYRAN)

Respondents

BEFORE THE MARYLAND
STATE COLLECTION AGENCY
LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER
OF FINANCIAL REGULATION

DFR-FY-2010-063

* * * * *

SUMMARY ORDER TO CEASE AND DESIST AND
SUMMARY SUSPENSION OF COLLECTION AGENCY LICENSES

WHEREAS, pursuant to the Maryland Collection Agency Licensing Act (or “MCALA,” at Business Regulations Article (“BR”), § 7-101 *et seq.*, Annotated Code of Maryland), the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation

(hereinafter the "Agency") is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State"), and for otherwise enforcing the provisions of MCALA and of the Maryland Consumer Debt Collection Act ("MCDCA," at Commercial Law Article ("CL"), § 14-201 *et seq.*, Annotated Code of Maryland); and

WHEREAS, the Agency find grounds to allege that Midland Funding LLC (a/k/a Midland Funding, Midland Funding Inc., Midland Funding, LLC); Midland Credit Management, Inc. (f/k/a Merchants Finance Corporation, Inc.), Midland Portfolio Services LLC, Encore Capital Group, Inc. (f/k/a MCM Capital Group, Inc.), James Brandon Black (a/k/a J. Brandon Black), George Richard Brooker, Paul Jaron Grinberg, Robin R. Pruitt, and James Syran (a/k/a Jim Syran) (collectively "Respondents") have engaged in acts or practices constituting violations of MCALA and MCDCA; and the Agency finds that action under Financial Institutions Article ("FI"), § 2-115, Annotated Code of Maryland, and State Government Article ("SG"), § 10-226(c)(2), Annotated Code of Maryland, is appropriate.

NOW, THEREFORE, the Agency has determined, for the reasons set forth below, that the public welfare imperatively requires that the Maryland collection agency licenses of Respondent MCM be immediately suspended; and that it is in the public interest that all other Respondents immediately Cease and Desist from engaging, directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland.

1. BR § 7-101 provides, in relevant part, the following definitions:

(b) *Board*.- "Board" means the State Collection Agency Licensing Board.

(c) *Collection agency*.- "Collection agency" means a person who engages directly or indirectly in the business of:

(1) (i) collecting for, or soliciting from another, a consumer claim; or

- (ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;
- (2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;
- (3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or
- (4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.
- (d) *Commissioner*.- "Commissioner" means the Commissioner of Financial Regulation.
- (e) *Consumer claim*.- "Consumer claim" means a claim that:
 - (1) is for money owed or said to be owed by a resident of the State; and
 - (2) arises from a transaction in which, for a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services.
- (f) *License*.- "License" means a license issued by the Board to do business as a collection agency.
- (g) *Licensed collection agency*.- "Licensed collection agency" means a person who is licensed by the Board to do business as a collection agency.

2. Pursuant to BR § 7-201, "[t]here is a State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation in the Department [of Labor, Licensing, and Regulation]." Further, BR § 7-203 provides that, "[t]he Commissioner is chairman of the Board."

3. BR § 7-308 provides, in relevant part, as follows:

(a) *In general*.- Subject to the hearing provisions of § 7-309 of this subtitle, the Board may reprimand a licensee or suspend or revoke a license if the licensee or any owner, director, officer, member, partner, or agent of the licensee:

* * *

- (3) in connection with the collection of any consumer claim:
 - (i) commits any fraud; or
 - (ii) engages in any illegal or dishonest activities;

(4) knowingly or negligently violates the Maryland Consumer Debt Collection Act;

* * *

(b) *Multiple licenses.*- If the Board finds that a ground for suspension or revocation of a license applies to more than 1 place of business that the licensee operates, the Board may act against:

(1) each license of the licensee;

* * *

4. BR § 7-401 (“Doing business without license”) prohibits unlicensed collection agency activity, providing as follows:

(a) *Prohibited act.*- Except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license.

(b) *Penalty.*- A person who violates this section is guilty of a misdemeanor, and on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months or both.

5. Pursuant to CL § 14-202, “[i]n collecting or attempting to collect an alleged debt,” a collection agency (“collector”) may not:

(1) Use or threaten force or violence;

(2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;

(3) Disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;

(4) Except as permitted by statute, contact a person's employer with respect to a delinquent indebtedness before obtaining final judgment against the debtor;

(5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;

(6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;

(7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;

- (8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or
- (9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not.

6. The Fair Debt Collection Practices Act ("FDCPA," at 15 U.S.C. § 1692, *et seq.*)

provides, in relevant part, as follows:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

* * *

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

* * *

§ 1692g. Validation of debts

(a) *Notice of debt; contents*

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial

communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector..

* * *

7. Although debt collectors may seek to collect from consumers with regard to time-barred debt, a debt collector is considered to violate 15 U.S.C. §§ 1692e(2)(A), 1692e(5), and 1692e(10) of the FDCPA if their collection activities are accompanied by actual litigation, or by a threat, either explicit or implicit, of future litigation. Further, a debt collector's filing of lawsuits on debt that appears to be time-barred, without having first determined after reasonable inquiry that the limitations period had been or should have been tolled, constitutes unfair and unconscionable means of collecting debt, and thus violates 15 U.S.C. § 1692f of the FDCPA.

8. The Agency began an investigation of Respondents after the rate of written complaints concerning Respondents' collection activities in Maryland increased during the first half of 2009, and after receiving complaints that some of the Respondents were engaged in unlicensed collection agency activities in Maryland. The Agency's investigation revealed the following:

a. That Respondents Encore, Midland Portfolio, Midland Funding, and MCM (collectively "Respondent business entities") are all collection agencies engaged primarily, directly or indirectly, in the business of collecting "bad consumer debts" purchased by Respondents on a wholesale basis for pennies on the dollar after having previously been "written off" by the original creditors;

b. That Respondent business entities all meet the definitions of "collection agency" under BR § 7-101(c) of MCALA, of "collector" under CL § 14-201(b) of MCDCA, and of "debt collector" under 15 U.S.C. § 1692(a) of the FDCPA;

c. That Respondent business entities purchase and attempt to collect on consumer debts, as defined by CL § 13-101(d) and 14-201(c), and by 15 U.S.C. § 1692a(5), namely debts acquired by consumers for personal, family, or household purposes;

d. That all of the Respondent business entities are owned, directed, managed, and/or operated by the same individuals, including Respondents James Brandon Black (a/k/a J. Brandon Black), George Richard Brooker, Paul Jaron Grinberg, Robin R. Pruitt, and James Syran (a/k/a Jim Syran) (collectively individual "Respondents");

e. That the principal place of business for each of the Respondent business entities is the same: 8875 Aero Drive, Suite 200, San Diego, California 92123; and that during

2004 and earlier, the primary business address for these business entities was 5775 Roscoe Court, San Diego, California 92123;

f. That at all times relevant to the facts set forth herein, Respondent MCM has been duly licensed as a Maryland collection agency engaged in the business of collecting consumer claims, as those terms are defined in BR § 7-102(a) and (e), respectively, holding four current collection agency licenses: MCM's main license was issued for its San Diego business office location (License Number 04-2364), with branch licenses issued for business offices in Phoenix, Arizona (04-3108), St. Cloud, Minnesota (04-4222), and Haryana, India (04-4221);

g. That Respondents Midland Funding, Midland Portfolio, and Encore have never been duly licensed to act as collection agencies in the State;

h. That Midland Portfolio, Midland Funding, and MCM are all subsidiary companies of Encore;

i. That Encore and Midland Portfolio, by and through their owners, directors, members, officers, and agents, direct the nationwide collection agency activities of Midland Funding and MCM, including their activities in Maryland; and

j. That all of the consumer claims which Respondents have attempted to collect, or have collected, in Maryland were in default at the time they were acquired by Respondents.

9. The Agency's investigation further revealed that consumers had filed over 60 written complaints pertaining to the collection activities of Respondents since 2001, including 17 to date in 2009. The Agency's analysis of these complaints reveals that, among other things, Respondents have engaged in the pattern and practice of consistently failing to validate debts when requested by consumers. Upon receiving a request for validation, Respondents' standard

response to consumers is to claim that the consumers failed to request validation within the 30-day period set forth in the FDCPA, even though in some instances the consumers requested validation within the 30-day period. In other instances, the consumers never received a first communication regarding the debt, but instead requested validation after first learning of the debt from adverse credit reports or from telephone calls from Respondents' collection agents. Regardless of the genesis or legal basis for consumer requests for validation, Respondents have systematically refused to provide such validation to consumers.

10. The Agency's investigation also revealed that, beginning in 2004 and continuing through the present time, Respondent Midland Funding, by and through the collection activities of Encore, Midland Portfolio, and the individual Respondents, has attempted to collect on consumer claims by filing over **10,270** actions in State courts throughout Maryland; no such actions were filed by Midland Funding prior to 2004.

a. The breakdown of actions filed by year is as follows: 1 in 2004; 1 in 2005; 9 in 2006; 174 in 2007; 4,839 in 2008; and 5,246 to date in 2009 (through September 11).

b. These Respondents have filed 10,119 complaints for judgment in the district courts of every county in the State, with the number of complaints filed in each county as follows: Allegany County (85), Anne Arundel County (713), Baltimore City (1,499), Baltimore County (1609), Calvert County (119), Caroline County (53), Carroll County (188), Cecil County (172), Charles County (266), Dorchester County (73), Frederick County (307), Garrett County (52), Harford County (296), Howard County (291), Montgomery County (1106), Prince George's County (1935), Queen Anne's County (64), Saint Mary's County (146), Somerset County (52), Talbot (53), Washington County (208), Wicomico County (223), and Worcester County (147) .

c. Respondents have filed an additional 151 complaints or notices of liens in various State circuit courts, with the number of actions filed in each county circuit court as follows: Prince George's County (73), Montgomery County (39), Carroll County (20), Dorchester and Frederick Counties (6 each), Howard County (5), and Baltimore and Anne Arundel Counties (1 each).

d. The Agency has reasonable grounds to believe that all of Respondent's legal actions were time-barred because they were brought after the expiration of Maryland's three year statute of limitations period.

11. Additionally, the Agency's investigation revealed that, since 2001, Respondent MCM, by and through the activities of Encore, Midland Portfolio, and the individual Respondents, has attempted to collect on consumer claims by filing over **20,129** complaints or notices of liens in Maryland district and circuit courts. The breakdown of actions filed by year is as follows: 114 actions were filed in 2001; 509 in 2002; 1388 in 2003; 4373 in 2004; 2435 in 2005; 2187 in 2006; 6841 in 2007; 2246 in 2008; and 36 to date in 2009 (through September 11). The Agency has reasonable grounds to believe that all of Respondent's legal actions were time-barred because they were brought after the expiration of Maryland's three year statute of limitations period.

Unlawfully Conducting Business as a Collection Agency Without a License

12. By directly or indirectly attempting to collect Maryland consumer claims which were in default at the time they were acquired by Respondents, Respondent Midland Funding, by and through the collection activities of Encore, Midland Portfolio, and the individual Respondents, engaged in the collection agency business in the State of Maryland. They are thus

subject to the MCALA, including its prohibition on engaging in collection agency activities without being duly licensed by the Board. However, Respondents Midland Funding, Midland Portfolio, and Encore have never been duly licensed to operate as collection agencies in Maryland. Therefore, these Respondents engaged in unlicensed collection agency activities in the State in violation of BR § 7-401 of MCALA, thereby subjecting Respondents Midland Funding, Midland Portfolio, and Encore, as well as all individual Respondents, to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

13. Further, the aforementioned unlicensed collection activities in the State constitute illegal activities by the owners, directors, officers, members, partners, or agents of a licensee – Respondent MCM – and are thus grounds to revoke the collection agency licenses of Respondent MCM under BR §§ 7-308(a)(3)(ii) and 7-308(b) of MCALA, and also subject Respondent MCM to fines and other non-monetary penalties under FI § 2-115(b) and to fines, restitution, and other non-monetary penalties under MCALA.

Unlawfully Filing Time-Barred Collection Actions

14. By filing time-barred actions in Maryland State Courts, Respondent MCM and Midland Funding, by and through the activities of Encore, Midland Portfolio, and the individual Respondents, violated 15 U.S.C. § 1692e of the FDCPA, as their collection activities were accompanied by actual litigation or a threat, either explicit or implicit, of future litigation. Further, Respondents' filing of lawsuits on debt that appeared to be time-barred, without having first determined after reasonable inquiry that the limitations period had been or should have been tolled, constitutes unfair and unconscionable means of collecting debt, and thus violates 15

U.S.C. § 1692f of the FDCPA. For the same rationale, Respondents violated the MCDCA, specifically CL § 14-202(8), by claiming, attempting, or threatening to enforce legal rights with knowledge that the rights did not exist. These knowing and willful violations of laws are in connection with the collection of consumer claims, and thus constitute grounds to revoke the collection agency licenses of Respondent MCM under BR §§ 7-308(a)(3)(ii), 7-308(a)(4), and 7-308(b) of MCALA, and also subject all Respondents to fines and other non-monetary penalties under FI § 2-115(b) and to fines, restitution, and other non-monetary penalties under MCALA.

Unlawfully Refusing to Validate Consumer Debt

15. All Respondents have regularly violated 15 U.S.C. § 1692g of the FDCPA by refusing to validate debts after receiving timely requests from Maryland consumers. In turn, these violations of law in connection with the collection of consumer claims constitute grounds for revocation of the collection agency licenses of Respondent MCM under BR §§ 7-308(a)(3)(ii) and 7-308(b) of MCALA, and also subject all Respondents to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that all collection agency licenses of Respondent MCM are SUMMARILY SUSPENDED effective immediately, and that Respondent MCM shall immediately suspend all collection activities in the State of Maryland, which shall include but is not limited to suspending

all open collection-related actions in Maryland State courts and refraining from filing any further actions; it is further

ORDERED that all Respondents shall immediately CEASE AND DESIST from engaging in any further collection activities in the State of Maryland, which shall include but is not limited to suspending all open collection-related actions in Maryland State courts and refraining from filing any further actions; and it is

ORDERED that Respondents shall immediately CEASE AND DESIST from violating the aforementioned laws governing debt collection activities; and that Respondents should be assessed statutory monetary penalties for all such violations; and it is further

ORDERED that all provisions of this Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses (“Summary Order”), including all Orders and Notices set forth herein, also apply to all unnamed owners, partners, members, officers, employees, and agents of all Respondent business entities named above; and it is further

ORDERED that the Resident Agents for all Respondent business entities named above shall provide a copy of this Summary Order to all unnamed owners, partners, members, officers, employees and agents of those Respondent business entities.

FURTHERMORE,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, Respondents are entitled to a hearing before the Agency to determine whether this Summary Order should be vacated, modified, or entered as a final Order of the Agency; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, this Summary Order will be entered as a final Order of the Agency if Respondents do not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations (“COMAR”) § 09.01.02.08, and State Government Article (“SG”) §§ 10-206.1 and 10-207, and in accordance with SG § 10-207(b)(4), each individual Respondent in this matter is only permitted to request a hearing, and to appear at such hearing, on behalf of himself, or through an attorney authorized to practice law in Maryland at the Respondent’s own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG § 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent’s own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator, State Collection Agency Licensing Board
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to BR § 7-308, the foregoing violations provide a basis upon which the Agency may suspend or revoke Respondent

MCM's Maryland collection agency licenses. Pursuant to BR § 7-205, the Agency may also issue an order requiring all Respondents to cease and desist from engaging in these violations and any further similar violations, may issue a monetary penalty of up to \$5,000, and may require Respondents to take affirmative action to correct the violations, including providing restitution to all aggrieved consumers (with restitution in this case potentially totaling over TEN MILLION DOLLARS). Additionally, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner described above, the Agency, may, in addition to taking any other action authorized by law, enter an Order making this Summary Order final, revoke the collection agency licenses of Respondent MCM, impose a civil penalty against all Respondents up to \$1,000 for each violation of MCALA and for each violation of MCDCA, issue a penalty up to \$5,000.00 for each subsequent violation of these acts, (with civil penalties in this case potentially totaling over THIRTY MILLION DOLLARS for Respondents' previous violations alone), or may take any combination of the aforementioned actions against Respondents.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

09-16-09
Date

Mark Kaufman *by SP*
By: Mark Kaufman
Deputy Commissioner of Financial Regulation

For Sarah Bloom Raskin
Commissioner of Financial Regulation
Chairperson, State Collection Agency
Licensing Board